

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Acceleration of Broadband Deployment)	WC Docket No. 11-59
Expanding the Reach and Reducing the Cost of)	
Broadband Deployment by Improving Policies)	
Regarding Public Rights of Way and Wireless)	
Facilities Siting)	

**COMMENTS OF
BOONE COUNTY, KENTUCKY**

The Fiscal Court of Boone County, Kentucky, by and through its legal counsel submits these comments in response to the Notice of Inquiry (“NOI”), released April 7, 2011, in the above-entitled proceeding.

Introduction

The Fiscal Court of Boone County, Kentucky exercises all lawful powers authorized related to the provision, regulation, and control of cable television on behalf of its citizens. Our current cable providers are Insight Communications and Cincinnati Bell.

Timeliness & Ease of Permitting Process

47 CFR 76.41 (d) states when a competitive franchise applicant files a franchise application with a franchising authority and the applicant has existing authority to access public rights-of-way in the geographic area that the applicant proposes to serve, the franchising authority shall grant or deny the application within 90 days of the date the application is received by the franchising authority. If a competitive franchise applicant does not have existing authority to access public rights-of-way in the geographic area that the applicant proposes to serve, the franchising authority must perform grant or deny the application within 180 days of the date the application is received by the franchising authority.

Of particular concern to Boone County are the time limits that the FCC’s rules place on franchise negotiations. Under these rules, a local franchising authority (“LFA”) has 90 days to act if “the applicant has existing authority to access public rights-of-way”, 180 days otherwise.

The FCC’s 90-day/180-day “shot clock” makes it virtually impossible for LFA’s in Kentucky to negotiate franchises unless the applicant agrees to an extension of time. Sections 163 and 164 of the Kentucky Constitution provide that before granting a

franchise for cable or telephone service, a county must first, after due advertising, receive bids therefore publicly. KRS 424.130(1)(b) provides that bids must be advertised not less than seven (7) days before the bid opening occurs.

Therefore, in Kentucky, not only are counties required to enact a franchise ordinance, they are also required take bids on the franchise and grant said franchise either by resolution or ordinance. Please note that Kentucky law requires that ordinances receive two "readings" at two separate meetings¹. Additionally, Kentucky law provides that no ordinance shall be effective until published.² Thus, there is additional time required by the publishing requirement. Clearly, the ninety (90) day rule does not even give the counties time to comply with state law, let alone enter into meaningful negotiations.

Conclusion

The Fiscal Court of Boone County, Kentucky would like to thank the Commission for its efforts to better understand the practices and policies surrounding local governments' management of the public rights of way. We strongly urge the Commission to consider our comments, as well as those submitted by communities across the country, before taking any action that may adversely affect local governments' rights of way authority. The Commission must resist moving forward in any other contexts to act on any of the issues raised in the NOI until the record in this proceeding is complete.

Respectfully submitted,

Fiscal Court of Boone County, Kentucky

By: 

Linda K. Ain

The Law Firm of Linda K. Ain

4725 Inman Drive

Lexington, KY 40513

859-224-3035

lindaain@insightbb.com

¹ KRS 83A.060 (4)

² KRS 83A.060 (9)